

ANTONIO R. VILLARAIGOSA
MAYOR

February 9, 2006

Marlene Dortch, Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Subject: **COMMENTS ON FCC NOTICE OF PROPOSED RULE MAKING (NPRM)
MB Docket No. 05-311**

As the Mayor of the City of Los Angeles, I am submitting comments on behalf of the residents of the City of Los Angeles (City). I am also submitting comments that support arguments made by the National Association of Telecommunications Officers and Advisors (NATOA) which address the legal concerns or authority surrounding the various issues regarding cable operators, direct broadcast providers, and telephone operators.

The City of Los Angeles is the second largest cable market in the United States and like many of the nation's big-city, urban areas, we manage a unique set of issues that must be addressed.

BACKGROUND

The NPRM may be a prelude to changes under consideration on cable franchising rules and regulations that will allow telephone companies (Telcos) seeking to offer cable services the ability to avoid current local cable television legal requirements. Telcos have been lobbying the state and federal legislators over the last two years to void federally-imposed legal requirements that give authority and autonomy to local franchising authorities (LFAs) to negotiate cable franchises for the benefit of local residents. Telcos are attempting to avoid payment of franchise fees, local control over public rights-of-way, Public, Educational and Government (PEG) obligations and other necessary local franchise obligations that have been part of the franchising environment for over 25 years.

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The NPRM seeks comment on three major issues: 1) the FCC's legal authority to act and rule upon cable franchising; 2) whether current federal, state and local franchising laws, rules and regulation are an impediment to the entry of competitive cable operators; and 3) what recommendations can be made to the FCC to change such impediments to permit easier access to new competitors in the delivery of cable television services, including the delivery of broadband services by the cable operators.

CURRENT STATE OF AFFAIRS AND POTENTIAL NEGATIVE IMPACTS

As Mayor, I firmly support the development of technology and cable competition which may result in less expensive and more accessible services to our residents. I do not believe that the City's current franchising process unreasonably imposes conditions that discourage entry into this market. Yet, while I support greater competition, I am also cautious to assure that the City's residents benefit from this competition, both in terms of access to services, as well as the ability to use this critical medium for distribution and dissemination of educational, government and public information.

Telcos are attempting to convince the FCC to adopt a different legal basis for granting a cable television franchise to a telephone operator. Current cable franchising law is premised upon the original intention of Congress which recognizes that an LFA is in the appropriate position to determine what is in the best interests of its residents based upon the input of its citizens, and negotiations with the cable operators in the provision of their services and operations. This approach has successfully worked for the City and our cable operators for over twenty-five (25) years and will work for any new entrants seeking access to the City's cable subscribers.

My concern with the NPRM is that the City's jurisdiction and control over the public rights-of-ways, including the right of the City to issue permits, collect necessary permit fees, and oversee construction on the City's streets, alleys and properties, could be severely limited or shifted to the State. The City acts as the primary guardian of the health, safety, welfare of its residents in providing technical management oversight of the cable franchise operators. In addition, payments made for rights-of-way use may be shifted to the State rather than placing the money back into the local community from which these revenues are generated.

Telcos and cable operators may not be subject to the City's newly adopted Subscriber Service Standards and Subscriber Bill of Rights that ensure the maximum protection of cable television consumers and the delivery of advanced services. In addition, Public, Educational and Government channel operations and programming requirements negotiated under current franchise law, may be eliminated as an unreasonable barrier to the entry of the telephone operators in the delivery of cable television services.

This last requirement is a critical component of our existing franchises. Cable television, and in particular public access and quality programming on government and educational channels, have become key mediums by which our public remains informed and through which our children can enrich their lives. Unfortunately, such access does not lend itself well to the market place where programming is directed to the areas of

the greatest discretionary income. While cable television is just one of the many avenues by which we can enrich public life and the education of our children, the absence of the LFA in assuming an adequate distribution of resources will only tend to worsen the divide between the "haves" and the "have nots".

Further, without LFA franchising rights and oversight, the operators will provide services without local accountability and responsibility in the areas of technical, PEG, consumer services, basic tier programming rates, and financial obligations to LFA's. Competition would be stifled as it is more likely that a telephone company will purchase or merge with an incumbent operator to increase its national market position in a local market, thereby potentially undermining any hope of real competition.

RECOMMENDATIONS

I strongly encourage our state legislature, Congress and the FCC, to streamline the current franchising process for new video market entrants to allow easier entry into local markets by:

- 1) Encouraging new entrants to seek franchise agreements with LFAs on the same terms and conditions provided under current federal law.
- 2) Permitting the Telcos and incumbent operators to apply with LFAs for franchise agreements based on established franchise areas which encourage the provision of cable, telephone, wireless, and broadband services to all consumers;
- 3) Permitting the LFAs to continue to require local obligations and responsibilities of all commercial video operators for the benefit of local residents. The LFA is the only entity with the time and inclination to oversee cable television franchises, including content issues.
- 4) Permitting the LFAs and Telcos to negotiate the terms and conditions of the franchise without any additional constraints on both parties as contemplated by the FCC and its NPRM.

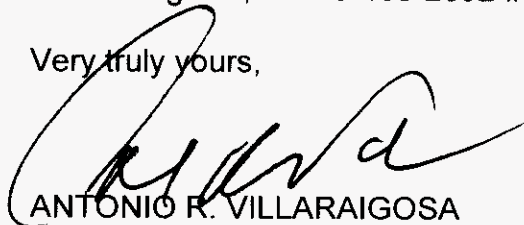
I strongly recommend the FCC abstain from interfering with local government authority over cable television franchising with regard to cable service providers and other new market entrants. The FCC must understand that the City's state of federally permitted authority has never been an impediment to the entry of new competitors or technologies, including broadband services. Market competition has been solely impeded by the significant financial investment that is necessary to enter and compete as witnessed by the financial failure of the three competitive franchise operators whose franchises were negotiated and approved by the City in the timely manner. Their failures to commence operations in the City were completely unrelated to the City's franchise obligations.

My detailed comments are attached for your consideration. I urge the FCC to refrain from adopting the NPRM.

Marlene Dortch, Office of the Secretary
February 9, 2006
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Please contact Ken Simmons, Executive Officer, Information Technology Agency, City of Los Angeles, at 213-485-2892 if you need additional information.

Very truly yours,



ANTONIO R. VILLARAIGOSA
Mayor

Attachment

AVR:ita

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF THE CITY OF LOS ANGELES
REGARDING CABLE FRANCHISING**

January 24, 2006

**MAYOR ANTONIO VILLARAIGOSA
CITY OF LOS ANGELES**

City Hall
200 North Spring Street
Los Angeles, CA 90012
Phone: (213) 485-3160
Fax: (213) 485-6236

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**COMMENTS OF THE CITY OF LOS ANGELES
REGARDING CABLE FRANCHISING**

These Comments are filed by the City of Los Angeles in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Los Angeles ("City") believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a cable franchise ordinance. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The City of Los Angeles is the second largest city in the United States with an estimated population of 3.9 million, covering over 465 square miles, that includes 6,528.7 cable television plant miles with 1,180,890 homes passed. The City's boundaries extend 44 miles from north to south and 29 miles from east to west. Our franchised cable providers are Adelphia, Comcast, Cox, Time Warner and Charter. Our community has negotiated cable franchises since 1965.

Our Current Franchises

The City has 14 franchise agreements with its five (5) cable operators) in 14 separate franchise areas of the City. Adelphia serves five (5) City franchise areas in the East San Fernando Valley, West Los Angeles, Sherman Oaks, Eagle Rock and Boyle Heights – E.L.A. Comcast serves six (6) City franchise areas in Sylmar, Sunland/Tujunga, Hollywood/Wilshire, Westchester, South Los Angeles, and Wilmington. Cox serves one (1) City franchise area in San Pedro. Time Warner serves one (1) City franchise area in West San Fernando Valley. Charter serves one (1) City franchise area in Pacific Palisades.

Our current franchises began in 1987 and expired in 2002. The franchises were extended to August 2005. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are currently negotiating a franchise renewal with the incumbent provider, Time Warner, who is expected to take over the Adelphia and Comcast franchises as a result of the recent sale of Adelphia to Time Warner and Comcast's swap of its systems with Time Warner by the end of year 2006.

Our franchises require the cable operator to pay a franchise fee to the City in the amount of five percent (5%) of the cable operators' revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

The franchises require the cable operator to provide channel capacity for three (3) local Public, Educational and Governmental Access (PEG) channels and three (3) City-wide interconnected PEG channels. At the current time, there are twenty-one (21) local Public and Educational Access channels (capacity), one (1) City interconnected Educational Access channel, channel 36, and one (1) City interconnected Governmental channel, channel 35.

Our franchises require that our PEG channels be supported in the following ways by the cable operators:

The franchises grant the cable operators the option of providing and operating the Public and Educational Access channels and facilities or choosing another entity to provide this service throughout the term of the franchise. There are twenty (20) Public and Educational Access channels managed and operated by the cable operators. One (1) non-profit organization manages and operates one intraconnected Public Access channel within the City on behalf of a cable operator in two franchise areas. The City's Government Access channel (channel 35) is funded, managed and operated by the City. However, the City's cable franchise agreements required a combined capital contribution in the amount of \$2,229,590 toward the construction of the Government Access studio for channel 35.

The franchises require the franchisees to provide and maintain State-of-the-Art studio facilities and equipment for Public and Educational Access use within the Franchise Area. Each studio must be available for Public and Educational Access users not less than fifteen (15) hours per week, including evening and weekend hours. If the need arises, the City may request increased availability of studio and facility use times.

Each Public and Educational Access facility is available to Access users on a first-come, first-serve, nondiscriminatory basis and on a priority basis to residents of the Franchise Area or organizations which serve the Franchise Area. Each franchisee or "operator" is required to maintain adequate staff and, or equipment to operate and distribute live or taped Public and Educational Access programming on a twenty-four (24) hour basis.

Regarding equipment, each Operator must provide a studio, portable production units and editing bays, available full time to Access users for the purpose of producing programming for the system's local and interconnected Access channels.

During the hours of Public and Educational Access operations, the operators must have trained staff available to provide technical assistance for pre-production, production and post-production services for all Access users. In addition, the Public and Educational Access staff must: conduct training programs in the skills necessary to produce quality Access programming; establish rules, procedures and guidelines for franchise specific and interconnected PEG Access channels and PEG Access users; and, provide Electronic Bulletin Board services, PEG Access publicity, outreach, referral and other support services to PEG Access users and PEG Access viewers.

At any time the City may review the performance of the operators to determine whether the operators are adequately providing Public and Educational Access facilities, equipment and operational support. Should the City find that the operators are not adequately serving Access users, by non-conformance with the franchise requirements, or by failure to comply with the spirit of the requirements, the City may exercise all remedies available pursuant to the franchise, including the assessment of liquidated damages.

Our franchises do not provide for any requirements regarding an institutional network ("I-Net").

Our franchises contain the following requirements regarding emergency alerts:

Emergency Override: The system will incorporate an emergency override capability accessible from remote locations for audio transmissions. The override capability will be granted only to those persons designated by the City.

The incumbent cable operators act in accordance with the protocol established under the Emergency Alert System (EAS) pursuant to the rules and regulations established by the County of Los Angeles, State of California and federal government. The City has relied upon the EAS in times of actual and threatened emergencies, including high wind, storm and flood warnings and earthquakes.

The City has further emergency service communications access to City residents over the cable systems in the utilization of its Government channel. The City's Government channel can provide live broadcasting in the event of an emergency, specific to meet the City's needs in times of disasters and emergencies, over the cable systems.

Our franchises contain the following customer service obligations, by which we are able to help ensure that the cable operators are treating our residents in accordance with federal standards and the terms the operators agreed to under the franchises.

The current franchises establish customer service obligations in the areas of service initiation, telephone and office availability, subscriber communications, rates and charges, and non-discrimination assurances. These service obligations and standards help the City ensure that the cable operators are treating our residents in accordance with federal and state law. In addition, the City has enacted the new Subscriber Service Standards (Attachment A) and the Bill of Rights (Attachment B), which became effective on January 1, 2006, to enhance consumer protections afforded in the current franchise agreements. Some areas covered by the current franchise agreements are set forth as follows:

Initiation of Service

Before providing initial service to each Subscriber, the operators shall advise said Subscriber, in writing of:

- (i) The availability of the Signal control device required by Section 624 (d) (2) of the Cable Act;
- (ii) The fees, charges, deposits, and associated terms and conditions which apply to all Services as well as the equipment and facilities then available or being distributed over the System which the Subscriber may elect to receive or use;
- (iii) The procedures by which the Subscriber will be notified of changes in fees, charges, deposits, or associated terms and conditions for any Service;
- (iv) The operators' practices and procedures for protecting against invasions of privacy as required by Section 631 of

the Cable Act, and Section 637.5 of the California Penal Code;

- (v) The operators' procedures for the receipt and resolution of Subscriber complaints; and
- (vi) The address and telephone number of the operator's office in the Franchise Area to which complaints may be reported.

In the event of any material charge in any of the items listed, the operators shall promptly notify each affected Subscriber of said charge in writing.

Telephone and Office Availability

The Franchisees must have telephone lines, either adequately staffed or with answering capability, providing at least emergency referral information, which are operational twenty-four (24) hours a day, every day, including weekends and holidays.

The Franchisee's office within a Franchise Area shall be able to respond to consumers a minimum of fifty-four (54) hours a week, eight (8) hours per day, on weekdays and four hours on Saturdays.

For information purposes only, a listing of Franchisees' closings or holidays (e.g. "nonbusiness" days) will be provided to the Department annually, by no later than July 1 and by no later than every anniversary thereafter.

On weekdays, the Franchisees must have telephone lines and its office within a Franchise Area open and adequately staffed to respond to consumers in at least four ways:

- (i) to accept payments;
- (ii) to exchange or accept return of converters;
- (iii) to schedule and conduct service or technician calls; and
- (iv) to answer Subscriber inquiries.

On Saturday, the Franchisees must have telephone lines and adequate staff available: to accept or exchange converters at the option of the Franchisees either at their offices or in the field; to schedule and perform emergency service or emergency technician calls; to answer consumer inquiries which may be answered by advising the caller when and to what number to call back during weekdays; and must have capability to accept payments.

Technicians employed by the Franchisees and capable of performing cable-related emergency repairs and maintenance must be available twenty-four (24) hours a day, every day, including weekends and holidays.

The Franchisees must acknowledge requests for repair and maintenance service from Subscribers within twenty-four (24) hours (excluding weekends and holidays). Verification of the problem, and, if possible, resolution, must occur within forty-eight (48) hours; and in any event, resolution must occur within one (1) week. Those matters requiring additional maintenance, repair or technical adjustments that are documentable as necessitating an excess of one (1) week to reasonably complete, must be finally resolved within thirty (30) days of the initial complaint. The department may require reasonable documentation to be provided by the Franchisees to substantiate a request for additional time to resolve a complaint.

The operators shall provide a pre-designated four-hour block of time for subscriber service appointments. The pre-designated service appointments shall, at a minimum, be scheduled in the morning hours (i.e., 8:00 a.m. to 12:00 p.m.) or in the afternoon hours (i.e., 1:00 p.m. to 5:00 p.m.) with priority for next day or next "available time" service appointments given to subscribers who are not scheduled within the aforementioned schedule.

All requests for Installation, whether requiring aerial or underground wiring, except where new building construction is required, must be completed within thirty (30) days of the request, provided, however, that the Franchisees shall have been able to obtain any necessary easements or other consents necessary to complete the Installation, and that the schedule or preferences of the Person requesting the Installation have not been responsible for delay, and that all applicable fees and charges have been timely paid and collected. In those situations where new building construction, including postwiring of multiple dwelling units, is required, installation shall be completed within 120 days of completion of the new building construction. Consent of the Department must be obtained for installations exceeding the periods specified above, which consent shall not be unreasonably withheld.

Subscriber Communications

The Franchisees shall send semi-annually, written notice to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Franchisee may be referred to the Department. Such notifications shall be a separate document not containing other promotional material but may be included with a billing statement. The Franchisee's telephone number for service and the telephone number for the Consumer Services Section of the Department shall be contained in the notice. This notice shall be forwarded to the Department, for a check of its accuracy, prior to forwarding it to the Subscribers.

Rates, Fees and Charges

For informational purposes and for the City to insure nondiscrimination, the operators shall provide the Department a complete schedule of all current Basic Service and Enhanced Service, excluding pay per view, rates and charges and shall give thirty (30) days prior notice to the Department and all affected Subscribers of any pricing changes or additional charges, excluding temporary marketing and sales discounts or offers. The company may petition the Department for the right to exclude certain rates from those to be provided to the Department, but no such petition shall be entertained with respect to any Basic Service rate, term or condition for any individual or any other Basic Service Subscriber.

The City reserves the right to regulate rates for Cable Service to the fullest extent permitted by law. Notwithstanding anything in this Agreement to the contrary, in the event that the Cable Act is amended or repealed, or restriction on the authority of the City to regulate rates are otherwise removed or lessened, or the FCC or any court permits the City to regulate such rates, the City may, at its discretion, establish procedures and standards for rates and regulate such rates to the fullest extent of its regulatory authority under federal, State and local laws.

The Franchisees shall not, except to the extent expressly permitted by law, impose any fee or charge on any Subscriber for: (i) any service call to said Subscriber's premises to perform any repair or maintenance work related to operator installed equipment necessary to receive service, except any such work which was necessitated by a negligent or wrongful act of said Subscriber; or (ii) the disconnection of any Services to a Subscriber, provided that the Franchisees may impose appropriate charges if, at the time of disconnection, some or all of the Franchisee's equipment is not returned to the Franchisee or the Subscriber has not paid all outstanding fees and charges due to the Franchisee; or there is damage to the equipment of the operator, excluding normal wear and tear and the circumstances described in Section 6.18 herein.

Nondiscrimination Assurances

The operator shall furnish and maintain Services in accordance with the provisions of this Agreement to each Person within the Franchise Area who makes a bona fide request to receive any service. Nothing in this Agreement shall limit the right of the operator to deny service to any household or individual which has negative credit or service history with the operator, which may include non-payment of bills or theft or damage to the operator's equipment, or who has threatened or assaulted employees of the Franchisee in the course of their employment. Provided that in the event Service is denied, the operator will give

written notice to the Subscriber of his right to appeal the operator's decision to deny service to the Department with appeal to the Board and Council.

Our current franchises contain varying reasonable build schedules for the cable operators pursuant to the attachment C for each franchise area of the City in the alphabetical order, A through N, under which the franchises are granted by the City. (See Attachment C – Build Schedule for Franchise Areas A through N.)

Our franchises require that the cable operator currently provide service to each franchise area that it services, without exception. All 465 square miles of the City is served by a franchisee of the City.

In order to ensure that our residents have access to current telecommunications technologies, our Sections 4.6.01 and 4.6.02 of the franchises contain the following rebuild or upgrade requirements:

"Throughout the term of this [franchise], the Franchisee shall Construct, install, operate, and maintain, the System in a manner consistent with all laws, ordinances, and construction standards for the City, and the City's technical performance standards and testing requirements as provided in Appendix A.... The [City] may from time to time, modify such testing requirements after consultation with the Franchisee. In addition, the Franchisee shall provide the City, upon request with a written report of the results of annual proof-of-performance tests. Throughout the term of the [franchise] the Franchisee shall maintain and upgrade the System Facilities and the technical performance of the System so as to keep pace with the developments in the State-of-the-Art, as defined herein, of Communications Facility technology.

The Franchisee may, on its own initiative, participate in or undertake experiments, tests, and other activities to enhance and advance the State-of-the-Art of Communications Facility technology. The City may request that the Franchisee undertake such tests to the extent the Franchisee and the City reasonably mutually determine that it is economically viable and feasible to do so and provided that such experiments, tests, and other activities are technically sound and undertaken in response to a mutually defined market demand. In addition, the Franchisee shall provide the City with a written report of the results of all significant tests conducted by the Franchisee at the request of the City...."

The City's incumbent operators have, with the exception of Adelphia, provided advanced services to the City's residents under the present franchises. Broadband cable modem services have been made available and provided by the operators, without exception, on a universal basis to all City residents since those services first became available to the operators.

Adelphia became a franchisee of the City in 1999 in four (4) franchise areas through a transfer agreement approved by the City. Adelphia, in 2001 acquired the

Boyle Heights – E.L.A. franchise in 2001. Adelphia agreed to upgrade those franchise areas but did not do so in a timely manner. Adelphia again agreed in 2005 to fulfill its initial agreement to upgrade its entire system and is now in the process of completing that work. Advanced services in the provision of High Definition TV programming, Video on Demand and Digital Video Recorder capacity were not available in two of Adelphia's service areas that affect approximately 100,000 City cable subscribers.

Our franchises are silent on the issue of "most-favored-nation" and "level playing field" status.

Our franchises contain varying insurance and bonding/letter of credit requirements depending on the geographic size and population density of the franchise area:

Franchise Insurance Requirements				
Franchise Areas		General Liability (Sec. 12.2.08)	Automobile Liability (Sec. 12.2.09)	Worker's Compensation / Employer's Liability ^(d) (Sec. 12.2.10)
A, C, E, F, G, H, I, K	(a)	\$ 1,000,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 10,000,000		
	(c)	\$ 5,000,000		
B, D, J, M, N	(a)	\$ 1,000,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 10,000,000		
	(c)	\$ 2,000,000		
L	(a)	\$ 500,000	\$ 1,000,000	\$1,000,000 / \$100,000
	(b)	\$ 1,000,000		
	(c)	\$ 1,000,000		

^(a) Per occurrence for Bodily Injury and Property Damage.

^(b) Aggregate limits during construction.

^(c) Aggregate limits after completion of construction.

^(d) Minimum limit per employee.

Performance Bond / Letter of Credit		
Franchise Area	Initial Amount	Current Amount*
A	\$ 892,000	\$ 892,000
B	\$ 170,000	\$ 170,000
C	\$ 1,000,000	\$ 1,000,000
D	\$ 640,000	\$ 115,000
E	\$ 1,000	\$ 1,000
F	\$ 864,000	\$ 864,000
G	\$ 1,565,000	\$ 782,000
H	\$ 1,330,000	\$ 665,000
I	\$ 2,380,000	\$ 1,500,000
J	\$ 540,000	\$ 540,000
K	\$ 1,790,000	\$ 1,450,000
L	\$ 82,000	\$ 82,000
M	\$ 100,000	\$ 100,000
N	\$ 300,000	\$ 300,000

*Reduced amount upon completion of all upgrade requirements.

The cable franchises grant the cable operators access to the public rights of way (PROW) and compatible easements for the purpose of providing cable television service. Apart from the franchises, the cable providers are required to obtain a permit from the appropriate municipal office before they may access the PROW. In addition,

any new above ground facility (storage box, etc.,) must be approved by the appropriate municipal office. A small application fee is required to process the application.

The franchises provide for the following enforcement mechanisms by which we are able to ensure that the cable operators are abiding by their agreements. The City franchises contain mechanisms of enforcement and remedies available to the City.

The City required performance bond/letter of credit obligations under the franchises permits the General Manager, of the City's cable TV oversight department, to withdraw monies wrongfully withheld or due the City by the Franchisees for failure to pay franchise fees or liquidated damages for PEG Access and construction violations.

Due process, including a notice of noncompliance or breach letter, notice of hearing and hearing and approval of the City Council are required as a condition precedent to the City's withdrawal of any monies allegedly due the City. These proceedings have never been invoked by the City under the terms of the current franchises.

The franchises also enumerate the specific conditions under which the City may terminate a franchise through breach proceedings. If the City can establish, after due process has been afforded the Franchisee under the terms set forth above, that a material condition of the franchise has been violated, then the City can revoke a franchise.

Material breaches of the franchises include:

1. Substantial failure to provide the financial information required by the City;
2. Substantial failure to satisfy the requirements regarding system characteristics or repeated failure to meet the technical performance standards;
3. Substantial or repeated failure to provide any Service to any Person as required by the franchises;
4. Substantial failure to comply with the standards, terms or schedule for construction.
5. Substantial failure to maintain the mix, level, and quality of services within the broad categories of video programming and other services; nothing in this paragraph shall imply any regulatory or power of censorship over the content of programming on the operators' Channels or Leased Channels;
6. Abandonment of the system, in whole or in material part, without the prior written consent of the Council;
7. Substantial and repeated failure to comply with the Leased Access requirements of Section 612 of the Cable Act;
8. Substantial failure to supply the Access Channels and related facilities and equipment after the date by which said items must be supplied;
9. Substantial failure to supply Government Access Channels and other support and any related services, equipment and facilities;

10. Substantial and repeated imposition of any nonstandard installation or other charges for Basic Service which are discriminatory;
11. Substantial and repeated failure to comply with the interconnection requirements;
12. Substantial and repeated failure to comply with the employment or purchasing provisions;
13. Substantial and repeated failure to comply with the consumer service standards and requirements;
14. Substantial failure to comply with the privacy rights of Subscribers or with the provisions of Section 631 of the Cable Act or Section 637.5 of the California Penal Code;
15. Substantial failure to make any of the Franchise Fee compensation payments required by the franchises, or to maintain a bond or other instrument
16. Substantial failure to deposit in an escrow account any compensation or other payments which the Franchisee disputes or contests that have not otherwise been paid to the City;
17. Willful violation of any prohibition set forth in the franchises;
18. The taking of any material action which requires the approval or consent of the Council without having first obtained said approval or consent
19. Substantial failure to furnish and maintain throughout the term of the franchises liability and indemnification insurance coverage;
20. Persistent failure to furnish each plan required by the City pursuant to the franchises;
21. To engage in a course of conduct intentionally designed to practice any fraud or deceit upon the City, any Subscriber, or any other use of the System;
22. Failure to cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a City governmental agency;
23. Any material misrepresentation, intentionally made by or on behalf of the Company in its proposal for the franchise granted pursuant to the franchises, or in connection with the negotiation or renegotiation of, or other modification to the franchises, to the extent that any such misrepresentation was relied upon by the City;
24. The conviction of the operators, any Affiliated Person, any director or executive officer of the operators or of an Affiliated Person, any Person holding Control of or a Controlling Interest in the operators, or any employee or agent of the operators or of any Affiliated Person acting under the express direction or with the actual consent of the operators, its directors or officers, of any criminal offense, including without limitation, bribery, fraud or obscenity, arising out of or in connection with the franchises or the award of the franchises granted pursuant to the franchises, subject to certain express limitations;
25. The conviction of any City officer, City employee, or City agent of the offense of bribery or fraud with respect to the franchises which arise out of or in connection with any intentional action by the operators, subject to certain express limitations;
26. Any material false entry knowingly made in the books or accounts or records of the operators, or any substantial false statements knowingly made in any

report to the City or otherwise by the operators, an director, officer, or other Person holding a Controlling Interest in the operators, any Affiliated Person, or any employee or agent of the operators acting under express direction or with the actual consent of the operators; or

27. Failure to comply with a duly constituted order or substantial ruling of any City regulatory body having jurisdiction over the operators.

Only the City Council and Mayor have the authority to revoke a franchise. Since 1965, the City Council has never instituted breach or revocation proceedings against a cable television operator.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchises provide that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

Section 2.4.05 of the franchises provides, "The [Franchisee] shall comply with : (i) all applicable laws and all requirements of the State of California, the FCC, and other federal or State agency or authority of competent jurisdiction; (ii) all local rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations, and other directives of the City issued pursuant to this Agreement, provided that any such rules, regulations, orders or directives issued pursuant to this Agreement shall be consistent with the provisions hereof.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government.

Pursuant to Article 5, Section 13.17 of the Los Angeles Administrative Code, the Los Angeles City Council shall, if it proposes to grant a cable television franchise, advertise the fact of such application, together with the statement that it proposes to grant the same, once in a newspaper of general circulation printed, published and circulated in the City of Los Angeles.

If the City of Los Angeles considers granting a competitive franchise in a franchise area currently served by a cable service operator, California State law requires public hearing notice in a newspaper of general circulation as well as certain considerations. Specifically, California Government Code Section 53066.3 provides:

"(a) If a city, county, or city and county elects to grant an additional cable television franchise in an area where a franchise has already been granted to a cable television operator, it shall do so only after a public hearing notice pursuant to Section 6066, in a newspaper of general circulation as defined in Section 6000, where all of the following have been considered:

- (1) Whether there will be significant positive or negative impacts on the community being served.
- (2) Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the area.
- (3) Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the public rights-of-way contrary to the intent of Section 767.5 of the Public Utilities Code.
- (4) Whether the franchise applicant has the technical and financial ability to perform.
- (5) Whether there is any impact on the franchising authority's interest in having universal cable service.
- (6) Whether other societal interests generally considered by franchising authorities will be met.
- (7) Whether the operation of an additional cable television system in the community is economically feasible.
- (8) Such other additional matters, both procedural and substantive, as the franchising authority may determine to be relevant.

(b) Nothing in this section prevents any city, county, or city and county from considering the approval or denial of an additional cable service franchise in any area of the city, county, or city and county, subject to compliance with subdivision (d), or the imposing of additional terms and conditions upon the granting of the franchise, as the city, county, or city and county determines is necessary or appropriate.

(c) The city, county, or city and county shall make a final determination as to whether to grant the additional franchise within six months of the application date unless the jurisdiction can establish that the applicant has unreasonably delayed proceedings designed to consider the matters set forth in paragraphs (1) to (8), inclusive, of subdivision (a).

(d) Any additional franchise granted to provide cable television service in an area in which a franchise has already been granted and where an existing cable operator is providing service or certifies to the franchising authority that it is

ready, willing, and able to provide service, shall require the franchise to wire and serve the same geographical area within a reasonable time and in a sequence which does not discriminate against lower income or minority residents, and shall contain the same public, educational, and governmental access requirements that are set forth in the existing franchise. This subdivision does not apply where all existing cable operators certify to the franchising authority that they do not intend to provide service within a reasonable time to the area to be initially served by the additional franchise."

Competitive Cable Systems

The City granted a 15-year competitive franchise agreement to Winfirst, a cable overbuilder, in 2001. The City granted a 10-year competitive franchise agreement to Altrio Communications Inc., an open video systems provider, in 2002. However, neither of these companies provides cable service in Los Angeles today. Winfirst declared bankruptcy in March 2002, prior to beginning construction in the City. Winfirst never recovered from bankruptcy and subsequently went out of business. In 2003, several months before Altrio was scheduled to begin providing service in the City, Altrio notified the City that it was going out of business and could not provide cable service to the City's residents. Although Altrio was subsequently purchased by Champion Communications, Champion is not providing cable services to the City as set forth in the franchise between the City and Altrio Communications.

As part of the franchise agreements with the City, Winfirst and Altrio were required to satisfy universal service requirements as well as Public, Educational and Government Access requirements comparable to those contained in the incumbents' agreements. Negotiations with Altrio and Winfirst were completed within one year.

Conclusions

The local cable franchising process functions well in the City of Los Angeles. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the PROW are not unduly inconvenienced, and that uses of the PROW, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including the City of Los Angeles, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Los Angeles

By: Honorable Mayor Antonio Villaraigosa

City Hall, 200 N. Spring Street
Los Angeles, CA 90012

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov

ATTACHMENT A

**CITY OF LOS ANGELES'
COMMENTS TO FCC NPRM – 05-311
SUBSCRIBER SERVICE STANDARDS**

CITY OF LOS ANGELES
SUBSCRIBER SERVICE STANDARDS
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DEFINITIONS

Board means the Board of Information Technology Commissioners of the City of Los Angeles, its designee, or any successor thereto.

Business Hours means at least the 54 hours during the week in each Franchise Area most convenient to Subscribers.

Cable Act means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), as may be from time to time amended.

Cable Service means the transmission to subscribers of Video Programming or other programming service, and subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming services.

City means the City of Los Angeles, or as appropriate in specific provisions of these Standards, the Council, Board, Department, or any other entity of or acting on behalf of the City, or any officer, official, employee, or agent thereof, its designee, or any successor.

Company means any individual or association, partnership, joint venture, corporation, or other legally-recognized entity, whether for-profit or not-for-profit which provides in the City, for some fee, whether direct or indirect, more than one channel of Video Programming to a business or residence, including but not limited to a home, condominium, or apartment whether or not the public rights-of-way are used. A "Company" shall include, but not be limited to, providers of cable television, master antenna television, satellite master antenna television, multipoint distribution service, open video system, and other providers of Video Programming, what ever their delivery technology. A "Company" shall not include the City or a landlord providing only reception of broadcast Video Programming to a single family-home or other residential dwelling consisting of four units or less.

Consumer Services Division means the unit of the City that assures that Subscribers' rights and responsibilities are represented before, during, and after provision of services, or any successor.

Customer Service Representative means an agent, employee, or contractor of the Company authorized to act on behalf of the Company.

Department means the Department or Office/Agency of the City of Los Angeles which administers to Consumer Services Division.

FCC means the Federal Communications Commission.

Franchise is the authorization by the City to construct, operate and repair a multi-channel video system in the public rights-of-way for the purpose of providing cable, open video channel or other multi-channel service.

Franchise Area is a geographic area within the City in which a Company is entitled to construct, operate and maintain a System, as described in its Franchise Ordinance.

General Manager means the Department General Manager, the General Manager's designee or successor.

Normal Operating Conditions are Service conditions within the Company's control. Conditions, that are ordinarily within the Company's control include but are not limited to, special promotions, pay-per-view events, rate increases or other rate changes, regular peak or seasonal demand periods, changes in channel alignment and maintenance or upgrade of the System. Conditions not within the Company's control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

Or means "and/or".

Outage is a loss of reception of audio or video on one or more channels.

Service Call means any work requiring the Company's representative to visit the Subscriber's residence or any appointment requiring the Subscriber's presence, including without limitation installation, repair and additional outlets.

Standards mean these Subscriber Service Standards.

Subscriber means the City or any business, entity or person who is lawfully receiving, for any purpose or reason, any multi-channel Video Programming, whether or not a fee is paid for such service.

System means any equipment or facilities used to deliver service to a Subscriber or Subscribers.

Video Programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1. TELEPHONES AND OFFICE AVAILABILITY

- 1.1 The Company will maintain a local, toll-free or collect call telephone access line which shall be available to its Subscribers 24 hours a day, seven days a week.
- 1.2 During Business Hours, these telephone lines shall be adequately staffed with knowledgeable, properly trained Customer Service Representatives who are equipped with timely and accurate information available to provide concise and accurate answers to Subscriber telephone inquiries. These Company representatives shall include representatives who are fluent in Spanish. In addition, the Company shall offer foreign language capability for callers.
- 1.3 The Company shall participate in the California RELAY system and shall provide Telecommunication Device for the Deaf ("TDD/TTY") (or equivalent) service by trained Customer Service Representatives at no cost that will allow such Subscribers to contact the Company for any reason related to the System. Upon request where closed captioning is available it shall be provided by the Company at no cost to the Subscriber beyond any cost imposed by the network offering closed captioning.
- 1.4 A trained supervisor or manager must be available to a Subscriber upon request. If one is not available a supervisor must call back no later than the next business day.
- 1.5 Under Normal Operating Conditions telephone answer time by a Customer Service Representative, including wait time shall not exceed thirty (30) seconds when the connection is made. If the call must be transferred, transfer time to a Customer Service Representative shall not exceed thirty (30) seconds 90% of the time.
- 1.6 Subscribers shall receive a busy signal less than three percent (3%) of the time.
- 1.7 The Standards set forth in this section shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured quarterly. Time responses will be measured and audited by the Company quarterly and shall be provided to the department 30 days after the end of each quarter. If the Company fails to comply in a quarter with these Standards, compliance shall be measured monthly until the Company returns to compliance. Where the lack of compliance is due to extenuating circumstances, the Company can request relief from the monthly reporting requirement from the General Manager, who shall be empowered to waive the monthly reporting requirement on a showing of good cause by the Company.
- 1.8 The Company shall notify the Department promptly when telephone service interruption affects the Company's ability to fully comply with these Standards.